Supreme Court, U.S.
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No. 82-729

IN THE

Supreme Court of the United States

October Term, 1982

DONALD T. REGAN, SECRETARY OF THE TREASURY,
Et Al.,

Appellants,

v.

TIME INCORPORATED,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

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January 10, 1983

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 474 ¶ 6, a criminal statute which prohibits all expression through the use of photographs or artwork in the likeness of any portion of any specimen of United States currency, violates the First Amendment of the United States Constitution.

2. Whether 18 U.S.C. § 504, which exempts from the prohibition of § 474 ¶ 6 the publication of certain types of black and white illustrations of currency on the condition, *inter alia*, that such illustrations serve "numismatic, educational, historical or newsworthy purposes," violates the First Amendment and the Due Process Clause of the Fifth Amendment of the United States Constitution.

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PARTIES TO THE PROCEEDING

The following individuals were defendants in the district court and are appellants in this Court: Donald T. Regan, in his capacity as Secretary of the United States Department of the Treasury; H. Stuart Knight, in his capacity as Director of the United States Secret Service; William French Smith, in his capacity as Attorney General of the United States; James R. D'Amelio, in his capacity as Special Agent in Charge of the New York Field Office of the United States Secret Service; and John S. Martin, Jr., in his capacity as United States Attorney for the Southern District of New York.

Time Incorporated was the plaintiff in the district court and is appellee in this Court. The affiliates and subsidiaries (except wholly-owned subsidiaries) of Time Incorporated are as follows:

American Cablevision of Indianapolis, Inc.
American Cablevision of Kansas City, Inc.
American Cablevision of Pennsylvania, Inc.
American Cablevision of St. Louis, Inc.
American Heritage Cablevision, Inc.
American Television of Midwest City, Inc.
ATC Cablevision of San Marino, Inc.
ATC Cablevision of South Pasadena, Inc.
Atrium Development Co.
Bartlesville Video, Inc.
Birmingham Cable Communications, Inc.
Cablevision of Durham, Inc.
Century Venture Corporation
Champaign-Urbana Communications, Inc.
Colorado Springs Cablevision, Inc.
Continental Cablevision of Richmond, Inc.
Editorial Novaro
Erie Telecommunications, Inc.
Frontier Cablevision, Inc.
Georgia-Kraft Company
Hankook Ilbo Time-Life Ltd.
Harima, M.I.D., Inc.

Hawkeye Cable Vision Corporation
Honolulu Television and Communications Corp.
Inverness/ATC Joint Venture
JLW III
Lakeside Cablevision
Laurel Cablevision, Inc.
Love Wood Products
Lower Bucks Cablevision, Inc.
Medecine et Sciences Internationals S.A.-France
Medical Science International-Brazil
Medical Science International-Japan
Memphis CATV, Inc.
Menlo Venture Corp.
Mile Hi Cablevision Associates Ltd.
Muscatine Television and Communications Corp.
New Berlin Cablevision
New England Subscription Television
N.E.W. Media, Inc.
Norman Cable TV, Inc.
Owens-Illinois De Puerto Rico
Papelera De Canarias
President Inc.-Japan
Private Channel Club of Miami
Public Cable Company
Rowohlt-Germany
Sandhill Community Antenna Corp.
Security & Guaranty Abstract Company
Shingakusha-Time
Southwest Cablevision
Temple-White Company, Inc.
Time-Life Microsonics Inc.
U.S.A. Network
Vista Cablevision Inc.
West Allis Cablevision
Wolverine Cablevision, Inc.

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MOTION TO AFFIRM

Pursuant to Rule 16.1 of the Rules of this Court, the appellee, Time Incorporated, moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. App. 1a-33a)[1] is reported at 539 F. Supp. 1371.

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[1] References to Appellants' Jurisdictional Statement are cited as "J.S.", and to the Appendix to that Statement as "J.S. App.".

JURISDICTION

The order and judgment of the district court was entered on June 18, 1982 (J.S. App. 34a-35a). A notice of appeal to this Court pursuant to 28 U.S.C. § 1252 was filed on July 16, 1982 (J.S. App. 36a-37a). On September 13, 1982, at the request of the Solicitor General, Justice Marshall extended appellants' time for docketing the appeal to and including October 13, 1982. On October 4, 1982, at the request of the Solicitor General, Justice Marshall further extended appellants' time for docketing the appeal to and including October 27, 1982. Appellants' Jurisdictional Statement was filed on October 27, 1982. By letter dated November 26, 1982, at appellee's request, the Clerk of this Court extended appellee's time to file the instant motion to and including January 10, 1983.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the Constitution of the United States provides in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

The Fifth Amendment to the Constitution of the United States provides in pertinent part:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

Title 18, U.S.C. § 474 ¶6 and § 504 are set forth in App. A.

STATEMENT OF THE CASE

A. Factual Background

1. Time Incorporated (Time) publishes several popular magazines—TIME, FORTUNE, SPORTS ILLUSTRATED, PEOPLE, MONEY, DISCOVER and LIFE—which report news and commentary on a multitude of subjects. All of Time's magazines make extensive use of color photographs and other artwork to depict ideas and highlight themes expressed in their texts.

During the past fifteen years, Time's editors and art directors have used photographic and other illustrations of portions of United States currency to convey information and ideas to their readers on a wide range of issues. Pictures of money have appeared in Time's magazines, *inter alia,* to symbolize the toll of inflation; to represent the economic interests at stake in a presidential election; and to convey information and editorial opinions on matters ranging from the place of the American dollar in international commercial markets to point-shaving scandals in amateur basketball (J.S. App. 10a). Examples of such illustrations are appended hereto (App. B).[2]

As a universally understood symbol which can be used to communicate ideas on many matters of contemporary public concern, and to depict phenomena—such as inflation and national deficits—which are complicated abstractions, the image of money is a uniquely versatile and powerful vehicle of symbolic visual expression. Freedom to use it in reporting the news is important to the journalists responsible for the editorial content of Time's magazines (J.S. App. 13a).[3]

Whenever an illustration of money has appeared in one of Time's magazines, the currency pictured has been significantly enlarged or reduced in size, discolored or otherwise distorted in appearance, shown only in part, and/or substantially obscured by printed legends or overlaid objects. (*See* J.S. App. 10a-13a.) Each illustration has appeared on only one side of a page, that page generally being of lightweight glossy stock. Since in most cases the expressive quality of such illustrations derives

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[2] The illustrations appended to this motion, and other, similar illustrations, appear in the record of the proceedings below. *See* Complaint at Exs. A-F, and Affidavit of Frederick A. O. Schwarz, Jr., sworn to July 20, 1981 ("Schwarz Aff.") at Exs. 1-6, 8, 10-11. The illustrations are described in detail in the Complaint (¶ 9) and the Schwarz Aff. (¶¶ 8-16), and are more briefly described in the opinion of the district court (J.S. App. 10a-13a).

[3] Explanations of the editorial value of illustrations of money to the editors and art directors of Time's magazines, and facts relating to the decisions to publish some of the illustrations appended hereto, appear in the record below in the Affidavits of Henry A. Grunwald, Editor-in-Chief of Time Incorporated; Gilbert Rogin, Managing Editor of SPORTS ILLUSTRATED; Ray C. Cave, Managing Editor of TIME Magazine; Rudolph Hoglund, Art Director of TIME Magazine; and Ronald L. Campbell, Art Director of FORTUNE Magazine, all sworn to July 17, 1981.

principally from the process of artistic interpretation and distortion, an actual-size, true-color, unembellished picture of a dollar bill—such as anyone could produce for a small charge in a color duplicating machine—is of little use to Time's journalists.

2. Chapter 25 of Title 18, U.S.C., defines and proscribes the counterfeiting, forgery or alteration of the currencies and other official obligations of the United States and foreign governments. Section 474, one of thirty-nine sections in that chapter, is captioned "Plates or stones for counterfeiting obligations or securities". Paragraphs 1st through 5th and paragraph 7th of § 474, which are not at issue here, prohibit unauthorized possession, manufacture, use, sale, importation and forgery of materials that can actually be employed for counterfeiting purposes, such as plates, stones and paper used for printing United States obligations. The sixth paragraph of § 474, however, relates to the manufacture and sale of pictures, and criminalizes, *inter alia,* the execution of any photograph or artwork "in the likeness" of any portion of any obligation of the United States. (*See* App. A.) Violations of § 474 ¶ 6 are punishable by fine up to $5,000 and imprisonment for not more than 15 years.[4]

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[4] The prohibition imposed by 18 U.S.C. § 474 ¶ 6 was originally enacted in 1864, as the eleventh section of a bill which authorized a loan badly needed to finance the Civil War. ("An Act to provide Ways and Means for the Support of the Government, and for Other Purposes," ch. 172, § 11, 13 Stat. 218 (221-22) (June 30, 1864).) The proceedings of the 38th Congress shed virtually no light on the legislature's intent with respect to this provision (J.S. App. 6a); they do reveal, however, that the "Loan Bill" was drafted in great haste, and passed under pressing time constraints by a Congress preoccupied by the threat of financial ruin. With no recorded attention, the prohibition embodied in Section 11 of the 1864 Act was carried forward in the various codifications and recodifications of the Federal laws (*id.*). It currently appears in the United States Code in substantially the same language as originally enacted, bearing precisely the same penalties as it bore 118 years ago (*id.*).

The legislative history of § 474 ¶ 6 is summarized in the opinion of the district court (J.S. App. 5a-6a). A more extensive review of the history and background of the paragraph, insofar as appellee has been able to reconstruct it, appears in the record below in the Memorandum in Support of Plaintiff's Motion for Summary Judgment, dated July 21, 1981, at A-1 to A-8.

On its face, and as interpreted by appellants and construed by the Federal courts, 18 U.S.C. § 474 ¶ 6 prohibits the execution in any manner of any and all representations of the paper money of the United States—whether good or bad, and regardless of size, shape or color. The paragraph does not require that the maker or seller of a "likeness" of currency produce or convey it with an intent to defraud; nor does it require that the "likeness" be of such character or quality as to be capable of confusing the public, or capable of being used in any manner relating to counterfeiting or forgery. (J.S. App. 13a-14a; *see also* J.S. 8.) Thus, paragraph 6th bans not only the lifelike facsimile of money executed with the intent—or at least the plausible capacity—to deceive, but also, *inter alia,* a Polaroid snapshot of a child displaying a birthday gift of a $10 bill; a room-size enlargement of the portrait of George Washington appearing on the face of a dollar, used as theatrical scenery by a drama club; and a farmer's rendering of the "shrinking" agricultural dollar, painted in water colors on the side of a barn.

In addition, since § 474 ¶ 6 also forbids every representation of "any part" of a specimen of currency, it prohibits an illustration of the *border* of a Federal Reserve Note, or of a twisted and folded $5 bill. It also condemns, for example, the execution of a leaflet bearing the words "In God We Trust" in any of the forms in which that legend appears on the reverse sides of paper currency, or a button displaying the picture of the White House as it appears on the back of a $20 bill. (*See* J.S. App. 13a-14a.) As appellants have repeatedly confirmed, the proscription embraces all illustrations of money published in Time's magazines, including those reproduced in Appendix B.

In brief, § 474 ¶ 6 imposes an absolute ban on all communication through the use of any part of the image of money.

3. In 1923, Congress modified the ban imposed by § 474 ¶ 6 to authorize certain illustrations of postage and revenue stamps. (Act of March 3, 1923, ch. 218, 42 Stat. 1437.) Thirty-five years later, apparently in response to the Treasury Department's desire to be rid of an administrative nuisance, *see* S. Rep. No. 2446, 85th Cong., 2d Sess. 5, *reprinted in* [1958] U.S. Code Cong. & Ad. News 5268, 5272, Congress expanded the exception to permit the execution of some illustrations of

money under conditions that are now set forth in 18 U.S.C. § 504(1). (Act of September 2, 1958, Pub. L. No. 85-921, § 1, 72 Stat. 1771.)[5] In creating this exception, Congress simply adopted precisely the same requirements that the Secretary of the Treasury had previously imposed when he granted "special permission" to individual applicants who requested permission to use pictures of money on an *ad hoc* basis. S. Rep. No. 2446, *supra*, at 5-6; [1958] U.S. Code Cong. & Ad. News, *supra*, at 5272; J.S. App. 8a-9a. Thus, § 504(1) permits the printing and publication of "illustrations" of currency if and only if such illustrations: (i) are in black and white; (ii) are of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of the matter illustrated; (iii) are for "numismatic, educational, historical or newsworthy purposes"; and (iv) appear in "articles, books, journals, newspapers, or albums".[6]

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[5] The Senate Committee Report states:

"The Treasury Department receives numerous requests for special permission to use illustrations of paper money and other obligations and securities of the United States for various legitimate purposes. Publishers of textbooks often desire to use illustrations of United States savings bonds and postal money orders, for example, in school textbooks. Collectors of old paper money likewise wish to use illustrations of such money in articles relating to their issue and in collector's catalogs. Historians similarly want to use illustrations of paper money to picture the currency in circulation during a particular historical period." S. Rep. No. 2446, *supra*, at 5; [1958] U.S. Code Cong. & Ad.News, *supra*, at 5272.

Curiously absent from this list of "legitimate purposes" was the need of members of the press to report the news. The committee did note, however, that "[n]ewspapers quite often publish pictures of paper money or checks in connection with news articles, usually because of ignorance of the statutory prohibitions against the use of such illustrations." *Id.*

[6] Section 504(1) further requires that negatives and plates used in making illustrations permitted by that section be destroyed after their final use. Time does not object to this requirement (*see* J.S. App. 26a n.19); its concern in this suit is not with Government restrictions on the handling or disposal of materials used to print pictures, but with the statutory prohibitions on the publication of the pictures themselves. In this Court, appellants contend for the first time that the legislative ban on the publication of illustrations of money may be justified by the need to prevent possible abuse of the materials used to make such illustrations. Time's comments upon this belated theory are set forth at pp. 19-20, 28, *infra*.

The definition of an "illustration" for the purposes of § 504(1), and the definition of the "educational, historical or newsworthy" purposes for which such "illustrations" are permitted, are not set forth in Title 18 or any other Federal law. Nothing in the legislative history of the statute explains why—or if—Congress perceived any basis for believing that illustrations of currency deemed by the Secretary of the Treasury to be "newsworthy" or "educational" might be more or less amenable to use in counterfeiting than any other kind, or explains why the Secretary was deemed competent to decide what is "newsworthy" and what is not. Nor did Congress explain, *inter alia,* why black and white illustrations of paper money—the front of which is, of course, primarily black and white—were thought to pose less peril to the public than those which are pink, green or any other color.

At the same time that it enacted § 504(1), Congress also authorized a broad exemption from § 474 ¶6 for motion picture films, microfilms and slides bearing illustrations of currency and other official obligations, without restrictions as to size, color or purpose. (Act of September 2, 1958, Pub. L. No. 85-921, §1, ¶2, 72 Stat. 1771 (codified at 18 U.S.C. § 504(2).)[7] The rationale for this exemption was summarized by the Senate Judiciary Committee in a single sentence: "The counterfeiter does not use a motion-picture film, microfilm or slide in the preparation of counterfeits . . . ." S. Rep. No. 2446, *supra,* at 7; [1958] U.S. Code Cong. & Ad. News, *supra,* at 5273-74. It is equally clear, however, that the counterfeiter also does not use a distorted picture of money on the cover of FORTUNE, or the plate or negative used to produce such a distorted picture.[8]

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[7] Section 504(2) does provide that illustrations appearing on films, microfilms or slides may not be used for advertising purposes (except philatelic advertising). Section 504(1) contains a similar prohibition. The design, execution or distribution of an advertisement "in the likeness or similitude" of any obligation or security of the United States is also independently proscribed in Title 18, U.S.C. § 475. Inasmuch as this lawsuit exclusively concerns Time's right to use illustrations of money for editorial purposes, the restrictions imposed upon advertisers are not at issue.

[8] Appellants now assert that the focus of the Government's enforcement efforts under the challenged statutes "is not on the finished product, such as a distorted, oversized photograph of a dollar bill on a magazine cover, but rather on the negative used to produce the cover" (J.S. 16). The court below found, however, that like the

4. The United States Secret Service, pursuant to 18 U.S.C. § 3056, is empowered to detect and arrest any person who prints or publishes a likeness of currency which is forbidden under the foregoing statutory scheme. Pursuant to 18 U.S.C. § 492, the Department of the Treasury is authorized to demand forfeiture of anything made, possessed or used in violation of these statutes, and anything "used or fitted or intended to be used" in the making thereof. Consequently, whenever Time publishes a picture that is prohibited under Title 18, its publisher and editors risk arrest and prosecution, and Time risks forfeiture of all copies of the issue of the magazine in which the picture appears, as well as forfeiture of all the materials used in its preparation.

5. On numerous occasions within the past decade, Federal law enforcement agents have advised Time that photographs and other artwork published in its magazines—including each of the illustrations appended to this motion—violated the prohibitions of Title 18 respecting the publication of pictures of United States obligations (J.S. App. 10a-13a). Time's employees have been warned repeatedly by these agents that Time must cease and desist from publishing such pictures (*id.*). In addition, following the publication of a cover illustration depicting TIME Magazine's interpretation of the principal issue involved in the 1976 presidential election, *see* App. B-4, Time was advised that the Treasury's files indicated that it had repeatedly failed to observe the proscriptions of these criminal statutes, and warned that the matter would be referred to the United States Attorney if Time did not cease and desist from further violations (J.S. App. 12a).

In delivering these complaints and warnings, Secret Service agents and Treasury Department officials have conveyed to Time substantially inconsistent instructions as to the nature of the pictures which the Government believes that Time *may* publish. In some cases, Time has been warned that no color "likeness" of any portion of currency may appear in its magazines—regardless of the size or medium of the illustrations—but that black and white "likenesses" are permissible so

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pictures themselves, the materials used to produce Time's four-color offset magazine covers of distorted pictures of money can be of little value to the would-be counterfeiter (J.S. App. 26a n.19).

long as they conform to the size requirements set forth in § 504(1) and appear for one of the purposes approved by the statute. On another occasion, however, Time was instructed by the Assistant Legal Counsel of the Secret Service that photographs of any portion of currency are completely prohibited, regardless of size, color or purpose, because a photograph is not an "illustration" within the meaning of § 504(1).[9] More recently, Time has been admonished on several occasions that, in the view of the Department of the Treasury, (i) *all* representations of *any* currency are prohibited, regardless of size, color or medium of illustration, unless accompanied by "numismatic, educational, historical or newsworthy" information relating to the *specific* Federal Reserve Note pictured, and (ii) illustrations of money intended primarily for "decorative or eye-catching purposes" may not be used at all (J.S. App. 15a).

This last interpretation of the statute effectively obliterates the narrow exemption that § 504(1) theoretically affords. Under this view, one may publish only pictures of specific dollar bills that might by some quirk prove to be of public interest, and truly newsworthy stories about the role of money in our society may not be illustrated by means of the one image universally understood to represent their subject matter. Moreover, since the Treasury Department further maintains that, by definition, an "eye-catching" illustration cannot serve an "educational" or "newsworthy" purpose, virtually all magazine illustrations of currency are banned on this ground alone. Indeed, the very essence of a successful magazine illustration is its ability to grab a reader's attention by "catching eyes", and a prohibition on pictures intended for this purpose is in substance a proscription of illustrative communication itself.[10]

On May 18, 1981, a Secret Service agent again complained to a member of Time's legal department that a recent cover of

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[9] *See* Schwarz Aff. at ¶ 9.

[10] That this construction of § 504(1) represents the current view of the Treasury Department as to the "conditions under which it is permissible to print illustrations . . . of United States . . . obligations" was confirmed in an official publication of the Department that was transmitted to Time's legal department by a Secret Service agent approximately one week before this action was filed (*see* App. C, *infra,* at C-3, C-4), and further confirmed by appellants in the proceedings below (J.S. App. 15a n.9).

SPORTS ILLUSTRATED Magazine (App. B-6) violated Federal criminal law. The agent further declared (i) that the Secret Service intended to seize all plates and other materials involved in the production of the SPORTS ILLUSTRATED cover; (ii) that the names and addresses of all individuals and firms involved in the design and preparation of the cover must be delivered to the Service; and (iii) that the agent wished to "interview" a member of Time's management (J.S. App. 12a-13a).

Ten days later Time initiated this action, seeking a judgment declaring that § 474 ¶ 6 and § 504 are unconstitutional on their face and as applied to Time, and enjoining appellants from enforcing or threatening to enforce them. On July 21, 1981, Time moved for summary judgment. Appellants cross-moved for summary judgment on September 9, 1981.

B. Time's Principal Contentions in the District Court

Time's principal claims in the district court were, *first,* that the prohibitions imposed in § 474 ¶ 6 and § 504 are impermissibly overbroad, and fail to satisfy this Court's standards for regulatory statutes abridging freedom of expression; and *second,* that § 504 is independently unlawful because it creates a content-based standard for permitted speech, and because it is impermissibly vague in violation of the Due Process Clause.

1. It is plain from the face of the challenged statutes that the prohibitions they impose were intended solely as anti-counterfeiting measures. While not "aimed" at speech, the statutory scheme in question directly and dramatically abridges the freedom to communicate by means of a potent medium of symbolic expression. And in an area where the Constitution demands that regulatory statutes be narrowly drawn to further the Government's ends without unnecessary intrusion upon protected expression,[11] the means adopted here lurch widely

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[11] *See, e.g., Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 633, 637 (1980); *Hynes v. Mayor of Oradell,* 425 U.S. 610, 620 (1976); *Police Department of Chicago v. Mosley,* 408 U.S. 92, 98-99 (1972); *Gooding v. Wilson,* 405 U.S. 518, 522 (1972); *Zwickler v. Koota,* 389 U.S. 241, 250 (1967); *United States v. Robel,* 389 U.S. 258, 264-66 (1967); *Aptheker v. Secretary of State,* 378 U.S. 500, 509 (1964); *NAACP v. Alabama,* 377 U.S. 288, 307 (1964); *NAACP v. Button,* 371 U.S. 415, 438 (1963); *Martin v. City of Struthers,* 319 U.S. 141, 146-49 (1943); *Cantwell v. Connecticut,* 310 U.S. 296, 310-11 (1940).

and erratically far of the mark. In a nutshell, the regulatory scheme challenged in this action bans the execution and publication of pictures which pose no conceivable danger to the public interest in prevention of counterfeiting, and which are unmistakably intended and necessarily understood solely as instruments for the communication of ideas.

a. Both the massive overbreadth of § 474 ¶ 6 and the expressive significance of the conduct it condemns are best appreciated not by hypothetical examples, but by the actual applications of the law by the Federal officials charged with its enforcement—*e.g.*, to the distorted, discolored, fragmented magazine illustrations appended to this motion. Recently, the statute was also found to justify the confiscation by the Secret Service of a *three-foot-long* poster of a Federal Reserve Note that had been doctored to appear as a "$30" "Inflationary Note" with a picture of former President Richard Nixon in the center, and had been executed by the artist, Gale Wagner, as a political statement on Mr. Nixon's economic policies and his involvement in the "Watergate" affair. *Wagner v. Simon,* 412 F. Supp. 426 (W.D. Mo. 1974), *aff'd,* 534 F.2d 833 (8th Cir. 1976). The criminalization of such artwork under an anti-counterfeiting law surely lends new meaning to the concept of "broadly prophylactic" regulation of protected expression. *See, e.g., Schad v. Borough of Mt. Ephraim,* 452 U.S. 61, 70 (1981); *NAACP v. Button,* 371 U.S. 415, 438 (1963).

b. The arbitrary requirements for exemption set forth in § 504(1) cannot relieve the constitutional infirmity of § 474 ¶ 6. Section 504(1) simply perpetuates the ban on all pictures of currency which fail to satisfy a list of irrational requirements as to size, color, forum and purpose. Consideration of the kinds of illustrations which this statutory scheme condemns reveals that Congress has indiscriminately "lumped together" pictures that might pose a risk to public welfare with those that positively cannot, failing "to employ more precise measures to separate one kind from the other", as the Constitution requires. *See Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 637 (1980).

Thus, Gale Wagner's oversized, distorted, black and white artwork was senselessly denied exemption under § 504(1)

solely because it did not appear in something the Secretary of the Treasury adjudged to be an "article, book, journal, newspaper or album". Similarly, a black and white likeness of a fragment of currency—for example, the photograph of the center portrait of George Washington on a $1 bill which appeared (surrounded by a life preserver) as an inside illustration in TIME Magazine (App. B-2)—is arbitrarily included within the ban because so much of a dollar as was shown appeared roughly true-to-size. By the same token, drastically off-size magazine illustrations of portions of money in any color—like the examples annexed here as App. B-1 and B-4 to B-6—are arbitrarily proscribed because they are not in black and white. In a word, there is no meaningful relationship, much less a substantial relationship, between the scope of the prohibitions imposed by these statutes and the protection of public safety: most of the illustrations condemned by these Federal laws are no more likely to threaten the public welfare than those arbitrarily allowed.

2. Wholly apart from its inadequacy as a means for distinguishing conduct that endangers public safety from protected speech, § 504 is facially unconstitutional because it creates a content-based standard for approved speech that is, in addition, unconstitutionally vague.

a. It is by now axiomatic that "time, place and manner regulations must be 'applicable to all speech irrespective of content.' " *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 536 (1980) (quoting *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209 (1975)); *accord, Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 516-17 (1981); *Heffron v. ISKCON*, 452 U.S. 640, 648 (1981). By requiring that permitted illustrations of money serve "numismatic, educational, historical or newsworthy" purposes, § 504(1) self-evidently violates this principle. The test is, of course, irrational, because the question whether a photograph is "newsworthy" or "educational" can have nothing whatever to do with its utility for counterfeiting. In addition, the requirement plainly distinguishes lawful from unlawful speech on the basis of its content: whatever these words may mean to the beholder, the inquiry whether a picture is "newsworthy" or "educational" can only be answered on the basis of a judgment about the nature or quality of its message. This judgment cannot be the

Government's to make. *See, e.g., Consolidated Edison Co. v. Public Service Commission*, 447 U.S. at 537-38.

b. The concept that "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes," *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)), has long been recognized to carry special force when applied to a statute inhibiting expression. "[A] man may be the less required to act at his peril here, because the free dissemination of ideas may be the loser." *Smith v. California*, 361 U.S. 147, 151 (1959), *quoted in Hynes v. Mayor of Oradell*, 425 U.S. at 620; *Cramp v. Board of Public Instruction*, 368 U.S. 278, 287 (1961). In addition, the vagueness doctrine has the special office in the First Amendment context of minimizing the risk of arbitrary and discriminatory application of criminal statutes by law enforcement officials and triers of fact. *Smith v. Goguen*, 415 U.S. 566, 572-74 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). As this Court recently observed in *Hynes*, a vague regulation affecting speech which fails to inform those covered by the statute how they may comply, and to specify narrow, objective standards for those who must apply it, gives to the police "*effective* power" to grant or deny permission to speak based upon arbitrary and subjective judgments. *Hynes v. Mayor of Oradell*, 425 U.S. at 622 (emphasis by the Court).

Like the limitation of permitted canvassing to "recognized charitable causes" in *Hynes*, a statute limiting permitted pictures to those which serve unspecified "educational, historical or newsworthy" purposes confers upon the Government the authority to determine the reasons for which the speech regulated by § 504 will be allowed. The statute thus offends the values at the very core of the vagueness doctrine. The perils of its vagueness have in fact been realized in the varying interpretations of § 504 put forth by the Secret Service and the Treasury Department (*see* pp. 8-9, *supra*). And in the Treasury's most recent construction (p. 9, *supra*), the vagueness of the statute has yielded precisely the consequence the vagueness doctrine was designed to forestall: even the most careful citizen could not divine from the face of the statute that rational law enforcement officials could draw these meanings from the text.

C. The Decision of the District Court

In a 53-page opinion, the district court held that § 474 ¶ 6 is unconstitutionally overbroad; that § 504 creates an unconstitutional content-based standard for permitted speech; that § 504 is constitutionally unacceptable as a regulation of the time, place and manner of expression; and that § 504 is unconstitutionally vague.

The district court found at the threshold that the visual image of money is a "powerful, expressive symbol", and that Time's use of the symbol in its magazines—"to dramatize or illustrate a set of facts, an existing condition, a moral crisis, a course of conduct"—constitutes protected speech (J.S. App. 19a-20a). Relying on principles of First Amendment jurisprudence to which this Court has adhered for more than forty years, the district court noted that regulatory statutes which abridge protected speech must be narrowly drawn to further legitimate and substantial governmental interests, and entail no greater intrusion on First Amendment freedoms than is necessary to promote the government's permissible goals.

> "Where a statute impinges upon protected speech, the burden is on the government to establish the validity of its asserted interest. *Schneider v. State,* [308 U.S. 147,] 161 [(1939)]. The judiciary has an overriding obligation 'to assess the substantiality of the justification[s] offered,' *Schad v. Borough of Mt. Ephraim,* 452 U.S. 61, 69 (1981), and to ensure that the regulation promotes legitimate governmental ends with minimal intrusion on First Amendment freedoms. *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980); *Hynes v.* [*Mayor of*] *Oradell,* 425 U.S. 610 (1976). 'The breadth of the legislative abridgment must be viewed in the light of less dramatic means for achieving the same basic purpose.' *Shelton v. Tucker,* [364 U.S. 479,] 488 [(1960)]. 'Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' *NAACP v. Button,* 371 U.S. 415, 438 (1963). *See Keyishian v. Board of Regents,* 385 U.S. 589, 604 (1967)." (J.S. App. 22a.)

Against the backdrop of these long-settled propositions and the uncontroverted statements of fact in the affidavits submitted by

Time, the court considered the two Federal statutes at issue here.

1. Turning first to § 474 ¶ 6, the district court noted that appellants had proferred two justifications for that statute: first, that the ban on execution of "likenesses" of currency "prevent[s] counterfeiting"; and second, that the prohibition "protect[s] the value [of] and respect for instruments issued as the official obligations and securities of the United States." (J.S. App. 26a, quoting Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment, September 9, 1981, at 8).

The first theory, the court observed, articulates a compelling government interest—a point Time has never disputed. However, the court found, the prohibition imposed by § 474 ¶ 6—which "casts its net over any and all likenesses of . . . currency[,] whether or not any given likenesses has the capacity to deceive or to act as a vehicle for counterfeiting," (J.S. App. 26a)—is not drawn with the specificity required to avoid unnecessary intrusion upon protected speech.

> "Neither the illustrations of money used by plaintiff nor the plates used to print those illustrations can be used to counterfeit money, or as counterfeit money. To criminalize illustrations such as those employed by plaintiff that have no utility for fraud or forgery and that cannot be used for counterfeiting, but which do serve as vehicles for artistic or journalistic expression, violates the First Amendment by unduly interfering with protected speech. There are less intrusive ways to combat counterfeiting without totally removing illustrations of money from the national discourse." (J.S. App. 26a-27a, footnote omitted.)

Appellants' second justification for § 474 ¶ 6, the court found, "is quite simply . . . constitutionally impermissible."

> "When this justification is analyzed, it can only mean that § 474 bans the use of illustrations of money because of the ideas such illustrations may symbolically represent. This runs counter to the constitutional doctrine that the government may neither prohibit nor prescribe the form or content of individual expression, absent a compelling state

> interest. *Police Department of the City of Chicago v. Mosley*, [408 U.S. 92,] 95, 98 [(1972)]. The government cannot compel or prohibit respect for any symbol or idea in this country. *Stromberg v. California*, 283 U.S. 359 (1931) (state prohibition of display of red flag struck down); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) (mandatory salute of the American flag invalidated); *Street v. New York*, 394 U.S. 576 (1969) (conviction for "disrespectful" language about the flag set aside); *Schacht v. United States*, 398 U.S. 58 (1970) (punishment for theatrical use of a uniform which was critical of the Army invalidated). Neither plaintiff nor any citizen can be compelled by the government to pay respect to the dollar. The sixth paragraph of § 474 cannot be justified as protecting, by restraining speech, 'the value [of] and respect for' currency issued by the government." (J.S. App. 27a, footnote omitted.)

As a facially overbroad ban on protected speech, therefore, the proscription in § 474 ¶ 6 did not withstand constitutional scrutiny (J.S. App. 28a).

2. Proceeding to § 504(1), the district court found that statute "draws lines: it is a time, place and manner regulation that creates distinctions among illustrations of currency based on criteria relating to content, purpose and forum in which the illustration appears" (J.S. App. 29a). The court held § 504(1) to be constitutionally infirm on at least three grounds.

First, the court found that § 504(1) creates an unacceptable content-based standard for permitted speech:

> "Section 504's concern with 'philatelic, numismatic, educational, historical, or newsworthy' purposes is constitutionally impermissible. Governmental action that regulates speech on the basis of its subject matter ' "slip[s] from the neutrality of time, place, and circumstance into a concern about content." ' *Police Department of the City of Chicago v. Mosley, supra*, 408 U.S. at 99, quoting Kalven, *The Concept of the Public Forum: Cox v. Louisiana*, 1965 Sup. Ct. Rev. 1, 29. In enforcing § 504, the government decides whether the purpose of the illustration is 'philate-

> lic, numismatic, educational, historical or newsworthy' and whether the forum in which it appears is indeed an article, a book, a journal, a newspaper or an album. Such decisions are based on content or subject matter. Succinctly put, § 504 requires judgments about the nature and quality of the message contained in the illustration, about the nature and quality of the article to which the illustration relates, and about the nature of the forum containing the illustration, types of judgment the First Amendment prohibits the government from making. *Cohen v. California,* 403 U.S. 15, 24 (1971); *Thornhill v. Alabama,* [310 U.S. 88 (1940)]." (J.S. App. 29a.)

Second, guided by this Court's recent decision in *Village of Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980), the district court considered the acceptability of § 504(1) as an exercise in legislative line-drawing. In *Village of Schaumburg,* a residential suburban community sought to regulate the activities of peddlers and door-to-door solicitors by requiring that charitable organizations desiring to raise funds through house-to-house solicitation demonstrate that at least 75% of their receipts would be used directly for the charitable purposes of the organization. Plaintiff there, an advocacy-oriented organization which could not satisfy the 75% requirement because its receipts were used principally for organizational and administrative costs, contended that the statute was facially invalid because the lines it drew were insufficiently related to the Village's goals of preventing crime and fraud. Affirming the lower courts' conclusion that the ordinance was facially overbroad, this Court agreed that the interests asserted by the Village were "indeed substantial", but were "only peripherally promoted" by the 75% requirement, and "could be sufficiently served by measures less destructive of First Amendment interests." 444 U.S. at 636.

The district court here concluded that the statutory scheme reflected in § 504(1) fails to satisfy the "tight nexus" demanded by *Village of Schaumburg* between statutory means and governmental ends (J.S. App. 30a).

> "There is no relationship between the distinctions among the purposes and forums, and the evils that the statute purportedly targets. . . .

> "Just as an organization which spends more than 25% of its receipts for non-charitable purposes is no more likely to commit fraud or crime than an organization spending less than 25% of its receipts for non-charitable purposes, the illustrations banned by the provisions under challenge here are no more likely to threaten the public welfare than those arbitrarily allowed. As a charity's ability to fulfill the 75% requirement bears no relationship to the likelihood of its solicitors to commit fraud or crime, the newsworthiness or educational value of an illustration, or the forum in which it appears, has little to do with its capacity to defraud the public." (J.S. App. 30a-31a.)

Third, applying the standard reaffirmed in *Hynes v. Mayor of Oradell*, the district court held that § 504(1) is, in addition, unconstitutionally vague. Initially, the court noted that "[i]t has long been recognized that time, place and manner regulations which vest in law enforcement authorities the capacity for discretionary enforcement or subjective definition of an offense are instruments for censorship" (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938); *Heffron v. ISKCON*, 452 U.S. 640 (1981)) (J.S. App. 31a-32a, footnote omitted). "The determination of what is 'philatelic, numismatic, educational, historical, or newsworthy,'" the court observed, "is rife with assumption and open to varying interpretation," and "[t]he definition of a journal, newspaper or album is anyone's game to play" (J.S. App. 31a). In addition, the "vice of vagueness" in § 504(1) is "starkly illustrated" by the construction adopted by the Treasury Department, which reduces the statutory exemption "to the vanishing point." (J.S. App. 31a n.23; *see* p. 9, *supra*.) "The distinctions drawn by § 504 do not clearly delineate the area of forbidden conduct, which forces the public to guess at its essential meaning in violation of due process of law. *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Hynes v. Mayor of Oradell*, *supra*, 425 U.S. at 620" (J.S. App. 32a).

For the foregoing reasons, the district court concluded that the Federal statutes here at issue are unconstitutional on their face and as applied to Time, and ordered the entry of a judgment so declaring.[12]

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[12] Since a declaratory judgment was to be entered by which appellants would be bound, the district court declined to issue an injunction (J.S. App. 32a n.24). Appellee has not cross-appealed this portion of the district court's judgment.

ARGUMENT

In a carefully reasoned opinion, the district court properly applied to simple and straightforward constitutional claims principles of First Amendment jurisprudence that have been repeatedly reaffirmed by this Court. The judgment appealed from is so plainly correct, and so manifestly compelled by the prior rulings of this Court, that a plenary hearing is not required.

For several months following entry of the judgment below, appellants were undecided whether to take this appeal at all.[13] Now that they have done so, they would have this Court believe that preservation of the statutes found by the district court to be constitutionally infirm is essential to the Government's ability to protect the Nation's currency. To bolster this suggestion, appellants have produced in this Court a statement attributed to a Deputy Assistant Secretary of the Treasury which summarizes a series of laudable efforts by Secret Service agents to detect and arrest persons actually engaged in counterfeiting. The statement also warns darkly of the hazards of unscrupulous use of plates and negatives, and repeatedly urges the view that liberalization of the law to accommodate the requirements of "legitimate" printers would endanger the republic by "tempting" such persons to turn their skills to criminal ends. (J.S. App. 41a, 43a.)

Appellants' approach here makes it important to recall that this lawsuit is exclusively concerned with the scope of the Government's power to ban the publication of *pictures*. *Not* at issue in the case is the Government's power to monitor or reasonably to regulate the handling and disposal of materials by which pictures are made. Nor does this suit concern the Government's power to detect and punish criminals like the persons described in the Treasury Department's statement, each of whom could be prosecuted without resort to § 474 ¶ 6

[13] The Solicitor General's first application to Justice Marshall for an extension of time to docket the appeal asserted that additional time was needed, *inter alia*, "to examine the ramifications of the district court's opinion in order to decide whether to docket an appeal . . . ." Appellants' Application for an Extension of Time, September 1982, at 2.

under the several sections of Chapter 25 which outlaw counterfeiting.[14]

On the subject of outlawed *pictures,* appellants' comments are limited. They could not and do not purport to defend the challenged statutes on the ground that they distinguish lawful from unlawful pictures based upon their possible utility to persons bent on crime. And while conceding that Time has been repeatedly advised that illustrations appearing in its magazines violate these statutes, and repeatedly warned to cease and desist from publishing such pictures, appellants do not attempt to argue that any of the photographs or artwork published in Time's magazines could possibly be confused for genuine currency, or serve any purpose in a counterfeiting plan.

Such arguments as appellants have mustered in defense of the challenged statutes may be briefly dispatched.

1. Section 474 ¶ 6.

Appellants fully agree that 18 U.S.C. § 474 ¶ 6 is a "broad" (J.S. 4, 5) and "flat" (J.S. 11, 16) prohibition which bans any and all illustrations of money "without regard to whether . . . [they] are capable of deceiving the public" (J.S. 8). Their central legal defense of this statute is expressed in the thought that "the First Amendment does not entitle an individual to communicate in precisely the manner he may deem to be most effective, especially where the limitation on expression is unrelated to the content of the message and the individual has

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[14] Appellants' discussion of the result below obscures the fact that the court's order invalidated exactly one section and one paragraph of another section out of the 39 sections in Chapter 25. Among those which remain, wholly unaffected by the decision below, are the statutes which make it a crime to forge, counterfeit or alter any United States obligation with intent to defraud, 18 U.S.C. § 471; to pass, utter, publish or sell (or attempt to pass, utter, publish or sell), or to import, possess or conceal, a forged, counterfeited or altered obligation with intent to defraud, § 472; or to buy, sell, exchange, transfer, receive or deliver any forged, counterfeited or altered obligation with the intent that the same be passed, published or used as true and genuine, § 473. And given appellants' new preoccupation with plates and negatives, it is worthwhile to note that the district court's judgment has no effect whatever on the provisions of § 474 other than paragraph 6th. Thus, *inter alia*, it is still very much a crime to make or execute "any plate, stone or other thing in the likeness" of a plate used to print an obligation of the United States, § 474 ¶ 2.

available numerous alternative means for conveying [the] message" (J.S. 10). In support of this proposition appellants invite the Court's attention to *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114 (1981), and urge an analogy to this Court's decisions in *Greer v. Spock*, 424 U.S. 828 (1976) and *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974).

a. As it happens, Time and all other citizens probably *are* entitled "to communicate in precisely the manner [they] may deem to be most effective", *unless* the Government can explain why they should not do so. *See, e.g., Consolidated Edison Co. v. Public Service Commission*, 447 U.S. at 533-35. However, that is not the issue here. The issue is whether a statutory scheme which significantly restricts the editorial content of Time's magazines in the name of safeguarding the currency satisfies the constitutional standards for regulatory statutes abridging freedom of speech.

It is not a defense of § 474 ¶6 to suggest that the use of a powerful expressive symbol by Time or anyone else can be suppressed because, in the Government's view, the idea it represents may be voiced another way. The argument recalls Harold Spence's prosecution in 1970 by the State of Washington for displaying an American flag with a "peace symbol" attached to it in protest of American military activity in Cambodia and the killing of students at Kent State University. One ground on which the Washington Supreme Court sustained Spence's conviction was the theory that the inhibition on his freedom of expression created by the State law was "miniscule and trifling": there were, in the court's estimation, "thousands of other means available to [him] for the dissemination of his personal views." *State v. Spence*, 81 Wash. 2d 788, 799-800, 506 P.2d 293, 300-01 (1973), *quoted in Spence v. Washington*, 418 U.S. 405, 411 n.4 (1974). In reversing, this Court rejected that argument "summarily", on the strength of the forty-year-old observation that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. State*, 308 U.S. 147, 163 (1939), *quoted in Spence v. Washington*, 418 U.S. at 411 n.4; *accord, Schad v. Borough of Mt. Ephraim*, 452 U.S. at 76-77; *Southeastern Promotions Ltd. v.*

Conrad, 420 U.S. 546, 556 (1975); *Thornhill v. Alabama*, 310 U.S. at 105-06. If § 474 ¶6 is valid, it cannot be because the Government thinks that Time ought to be able to report the news another way.

b. *Greenburgh* and the other authorities cited by appellants do not hold otherwise.

In *Greenburgh*, a group of civic associations which habitually communicated by placing unstamped written material in residential letter boxes challenged the validity of a Federal law, 18 U.S.C. § 1725, which prohibits the deposit of mailable matter in letter boxes without the payment of postage. This Court found no impermissible abridgment of the associations' First Amendment rights in the requirement that those who use the facilities of the Postal Service pay appropriate postage for doing so. At least three factors distinguish that case from the present claim.

(i) As Justice Rehnquist emphasized in his opinion for the Court, the aggrieved associations in *Greenburgh* suffered no constraint upon their right to use the mail for any sort of communication, so long as they paid the postage. The burden on their speech, if any, was the expense and time consumed in sending matter destined for letter boxes through the postal system. 453 U.S. at 127. The statute imposed no restriction on the content, volume or appearance of the messages plaintiffs wished to convey.

By contrast, Time's objection to § 474 ¶ 6 is that photographs and artwork which it wishes to use to report the news to the public may not be used *at all*. We deal here not with a burden relating to the cost or convenience of expression, such as obtained in *Greenburgh*, but with a prohibition upon speech itself.[15]

(ii) Like *Greer* before it, *Greenburgh* involved a claim of access to property under the Federal Government's control for purposes inconsistent with the Government's own. A majority

[15] The nature of the burden on speech at issue in *Greenburgh* is akin to the burden created by the portion of § 504(1) which requires that plates and other materials used to prepare *permitted* illustrations of currency be destroyed after their final use. As noted above, Time has made plain in this lawsuit that it has no objection to such a requirement (*see* J.S. App. 26a n.19), notwithstanding the additional time, expense and administrative burdens that it may entail.

of this Court viewed the case as presenting the question whether a letter box constitutes a "public forum", and concluded that it does not. The majority's decision was thus explicable by reference to the familiar principle that "[t]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." *Greenburgh*, 453 U.S. at 129-30, quoting *Adderley v. Florida*, 385 U.S. 39, 47 (1966) (state may bar demonstrators from portions of county jail reserved for jail purposes), and *Greer v. Spock*, 424 U.S. at 836 (civilian political campaign speeches and pamphleteering properly excludable from Federal military installation devoted to basic combat training). Nothing could be clearer than that an effort by the Government to regulate what a publisher chooses to say, or how the publisher chooses to say it, in the pages of his own magazine, bears a greater burden of justification under the First Amendment than regulations which secure a prison, a military base, or a Federal letter box. In point of fact, as the district court realized, this case has nothing whatever to do with the Government's right to bar from its facilities speech that might disrupt the Government's legitimate purposes. No amount of torture of a counterfeiting law can transform this lawsuit into a debate over the dimensions of the concept of the "public forum".[16]

(iii) Finally, *Greenburgh* (like *Greer* and *Lehman*) is illustrative of a line of authorities in this Court involving conduct which combines "speech" and "nonspeech" elements, in the sense that the mode of expression selected by the speaker necessarily entails activity by the speaker which could impair public safety or welfare. Like the act of picketing a military

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[16] In an effort to bring this case within the rule of *Greenburgh* and *Greer*, appellants have minted the theory in this Court that "the design and appearance of United States obligations . . . are as much the 'property' of the government . . . as . . . the military base in *Greer*," (J.S. 11)—and, presumably, the letter boxes in *Greenburgh*. Indeed, appellants now claim that this anti-counterfeiting law is in effect "a copyright statute"! (J.S. 11 n.7.) The contention, if seriously intended, is unworthy of the Government. And if appellants are saying here that Time's distorted pictures of money impair the "integrity" of the Government's property (*see* J.S. 11), they have returned to the thesis that Time must pay homage to the Government's symbol, a notion decisively and properly rejected in the court below, *see* pp. 15-16, *supra*.

installation to protest a war, the mode of communication selected by plaintiffs in *Greenburgh* inherently entailed dangers to the effective operation of a Government service. Evidence offered at trial tended to show that reservation of letter boxes to posted mail was important, *inter alia*, to facilitate secure delivery by reducing overcrowding; to facilitate the investigation and prevention of mail theft; to promote the privacy of postal customers; and to protect mail revenues and minimize costs. *Greenburgh*, 453 U.S. at 117-18. It was thus appropriate for the Court to assess both the need for the restriction and the nature and extent of its burden on speech, and to conclude that the incidental constraint upon free expression of which the civic associations complained did not amount to an impermissible abridgment of rights secured by the First Amendment.

By contrast, the pictures at issue in this action involve speech alone: appellants have offered nothing to suggest how or why the Government's interest in prevention of counterfeiting might be furthered by the application of § 474 ¶ 6 to the fragmentary and distorted illustrations published by Time. Thus, we do not have here a demonstrably "substantial" government need to regulate conduct in a manner which inevitably entails restraint on speech. We have instead patently innocuous pictures which can endanger no one, but constitute important editorial material for Time and powerful means of symbolic expression generally.

The cases cited by appellants furnish no aid in justifying the application of a counterfeiting statute to speech which poses no danger of counterfeiting.

2. Section 504.

a. Appellants several times assert that the limitations imposed in § 504 are constitutionally sound because they "are not directed at the content of the stories that appellee or [others] may seek to illustrate . . . , [but] merely [at] the manner in which an illustration may be presented" (J.S. 12). The statement is disingenuous. Time has never suggested that the restraints in § 504 are aimed at the content of *stories;* they are, however, indisputably addressed to the content of *pictures.* And as the district court observed, the question whether an illustration serves an "educational" or "newsworthy" pur-

pose—which has, in any case, nothing to do with its potential for use in counterfeiting—is necessarily answered by reference to the nature or quality of the message or information the illustration conveys, and the nature and quality of the text to which it relates (J.S. App. 29a). Appellants offer no suggestion as to how this limitation can be deemed to concern anything other than the content of speech, and there is none.

b. Appellants next maintain that the district court's constitutional objections to §504 are unfounded because (i) appellants do not think that any magazine publisher would "have difficulty" satisfying the requirements that the district court found to be impermissibly content-based (J.S. 13); (ii) the statute does not expressly authorize censorship by the Government based upon a speaker's "particular point of view", and has not yet (in appellants' opinion) been used for this purpose (*id.*); and (iii) a person of ordinary intelligence should know what the language of the statute means (*id.*).

The record below establishes that Time has been repeatedly warned to cease publishing pictures of which no two Government agents have yet been able to supply an intelligible common definition (*see* pp. 8-9, *supra*). Indeed, it is plain from appellants' Jurisdictional Statement, as it was in the court below, that the principal Federal agencies charged with the enforcement of these statutes cannot agree among themselves as to what the statutes mean. The Treasury Department has unequivocally declared that an illustration of currency can satisfy the exemption provided in §504 only if it pictures (in a non-"decorative" or "eye-catching" fashion, and accompanied by informative text) *specific* Federal Reserve Notes of "numismatic, historical, educational or newsworthy" value. The Department of Justice maintains, however, that this "opinion" of the Treasury Department is "advisory only" as far as it is concerned (J.S. 14 n.9)—although it does not expressly declare that it *rejects* the Treasury's interpretation. In any event, since the Treasury Department is the agency empowered to detect and arrest violators of the statute and to seize offending materials, its "opinion" is certainly pertinent from the perspective of the citizen whose liberty and property are at peril. And under the Treasury's view of the statute (*see* p. 9, *supra*), any magazine publisher would certainly have difficulty satis-

fying the requirements as to permissible "purpose"—indeed, none of the illustrations Time has published in the past, or is ever likely to publish, could qualify.[17]

The fundamental question, however, is not whether Time or anyone else would "have difficulty" satisfying whatever reading of the statute that appellants (or any one of them) may choose to adopt at a particular time, but whether the statutory restrictions have any substantial justification in relation to the legislative goal. As the district court found, they do not.

By the same token, Time submits that appellants' happy assurance that the statutory tests have not yet been used as vehicles for censorship of speech based on the speaker's point of view cannot satisfy the constitutional requirements that a regulation constraining speech have a legitimate and substantial reason for existing, and that "time, place and manner" regulations be crafted so as to minimize the possibility of discretionary enforcement and arbitrary suppression. *See Staub v. City of Baxley*, 355 U.S. 313, 322 (1958); *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940); *Hague v. CIO*, 307 U.S. 496, 516 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 451 (1938).

c. Appellants' final point is that, even if the district court's objections to § 504 were well-founded, the court should have "saved" the statute by construing its terms so as to avoid or alleviate their constitutional infirmities. Alternatively, appellants contend, the proper solution was to invalidate *only* § 504—leaving as the law of the land the sweeping ban

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[17] Appellants' assertion that the "purpose" and "forum" provisions of § 504 have never served as a basis for enforcement of the statute (J.S. 13) is flatly wrong, as well as beside the point. As noted above, the artwork confiscated by the Secret Service in *Wagner v. Simon* violated the Federal law solely because it did not appear in one of the approved "forums". In any event, no Federal agency has ever disavowed the possibility of enforcement and prosecution for violation of *any* of the requirements of these statutes. Moreover, in light of the fact that the Treasury Department's construction of § 504 renders all of Time's pictures *independently* unlawful under the "purpose" requirement (*see* p. 9, *supra*), appellants' suggestion that Time lacks "standing" to challenge this or any other element of the statutory scheme is unsupportable. *See* J.S. App. 15a-19a; *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298 (1979); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Doe v. Bolton*, 410 U.S. 179, 188 (1973).

imposed in § 474 ¶ 6, which the district court found at the outset to be a facially overbroad intrusion on protected speech.

To develop a possible "saving" construction, appellants press the view that the terms of § 504 which limit illustrations of money to certain permitted purposes and certain approved forums were in fact intended to proscribe only "facsimiles", and to allow the use of such illustrations in "publications" (J.S. 13, 14). There is no evidence that appellants (and particularly the Treasury Department) have ever acknowledged this supposed intention in their own prior interpretations of the law (*see* pp. 8-9, *supra*, and App. C), and the fact they have not done so is not surprising: the construction they now propose reduces to a nullity a substantial portion of the language in the statute Congress actually passed. That the district court did not adopt this construction is also not surprising, for appellants did not urge it or any other "saving" construction of § 504 in that court, but contended only that the challenged statutory scheme is acceptable in all respects. And while it is true that a court must attempt to construe statutory language to avoid constitutional problems if at all possible, a judge is not at liberty to engage in wholesale revision of a criminal law. *Aptheker v. Secretary of State*, 378 U.S. 500, 515 (1964); *see Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (1975); *Blount v. Rizzi*, 400 U.S. 410, 419 (1971). In substance, that is what appellants now maintain should have been done here.

In any event, the construction of § 504 which appellants now propose would not in fact "save" it. In the first place, the enforcement of § 474 ¶ 6 against the artwork executed by Gale Wagner (*see* p. 11, *supra*) succinctly demonstrates the indefensibility of confining permitted pictures to "publications". As the district court observed, the forum in which an illustration appears has little to do with its capacity to defraud the public (J.S. App. 30a-31a). The notion that a three-foot-long poster of a vastly distorted bill poses any greater danger than an illustration of a dollar appearing in a "publication" is simply unsupportable. Indeed, appellants do not explain at all the rationale for this limitation in their suggested interpretation of the statute.

Moreover, appellants' proposed reading of § 504 deals only with the "purpose" and "forum" requirements of the statute, and fails to address the equally irrational restriction as

to color. In the court below, Time demonstrated in considerable detail that the narrow exemption permitting it to publish only black and white illustrations of money is substantially useless to its magazines.[18] And as the illustrations appended to this motion reveal, Time's dramatically off-size and distorted pictures of portions of money have no greater capacity to deceive when printed in color than when they appear in black and white. There is thus no legitimate basis for the imposition of this restriction upon protected speech.

Appellants do not contend otherwise. The most that they offer in defense of the complete prohibition on color is the new assertion by the Treasury Department that the process of preparing color pictures more closely resembles the preparation of actual counterfeits, thus "bring[ing] legitimate printers a few steps closer to an actual counterfeiting operation" (J.S. 16 n.10; J.S. App. 43a).

There is no reason to believe that materials used to prepare Time's distorted illustrations could be of any aid to a counterfeiter (*see* J.S. App. 26a n.19), and appellants have offered no evidence to the contrary. In any event, if the Government believes that potential abuse of such materials is in fact the evil to be avoided, a host of precautions could be devised to cope specifically with that problem, without imposing criminal sanctions for *pictures* that appellants essentially concede to be innocuous (*see* J.S. 16). Finally, the suggestion that the prohibition on color must be maintained to forestall the risk that unscrupulous printers will perceive the means of copying currency, and be inspired to do so for profit (*see* J.S. App. 13a, 41a), epitomizes the danger of "broadly prophylactic" regulation of speech. If, as no one appears to dispute, Time's pictures are protected by the First Amendment, the Government may no more ban them on the ground that their preparation carries a "power of suggestion" or incentive for unlawful conduct by Time's artists and printers than it could ban the publication of murder mysteries to prevent public education in techniques of homicide.

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[18] *See, e.g.*, Affidavit of Henry Grunwald at ¶¶ 14, 17; Affidavit of Ray C. Cave at ¶¶ 12-14; Affidavit of Gilbert Rogin at ¶ 8, all sworn to July 17, 1981.

In sum, appellants' proposed construction of § 504 does *not* resolve its constitutional infirmities. The alternative solution of invalidating one unconstitutional statute but leaving another cannot be seriously considered. Nor is it surprising that these devices do not avail in this case. The requirements of the statutes that Congress wrote bear no substantial relationship to the goal of prevention of counterfeiting, and there is neither logic nor authority for a court to bend into another form statutory tests which it has found to be wholly unjustified in the first place.

Rather than seeking in the first instance affirmatively to define the "likenesses" of money which might realistically imperil the security of the currency, almost 120 years ago Congress enacted a broad negative—a blanket ban whose objectives are by now thoroughly obscure, and whose language admits of no principled distinctions. Ninety-four years later, instead of attempting to correct the fundamental problem by repealing the statute and starting again, Congress chose to engraft upon the ban a series of carelessly constructed and unconstitutional exceptions, borrowed without evident meaningful appraisal from the customary practices of the Treasury Department. Thus, even though the First Amendment ensures that all speech is permitted except that which is expressly and justifiably forbidden, the premise of the present statutory scheme is exactly contrary: all use of a particular expressive symbol is prohibited except that which the Government allows.

The solution to the problem presented in this case is not judicial manipulation of a pair of indefensible statutes, but a new law that Congress plainly knows how to write.[19] The

[19] In recent House proposals for a general revision of Title 18, the current welter of counterfeiting laws in Chapter 25 would have been replaced by a single provision making it a crime, *inter alia*, knowingly to make, conceal, utter or possess a counterfeit written instrument *"with intent to defraud another person or a government"*. *See* H.R. 5703, 97th Cong., 2d Sess. § 2541(a)(1982); H.R. 5679, 97th Cong., 2d Sess. § 2541(a)(1982); H.R. 4711, 97th Cong., 1st Sess. § 2541(a)(1981); H.R. 1647, 97th Cong., 1st Sess. § 2541(a)(1981) (emphasis supplied). A recent Senate proposal would similarly have substituted for the various counterfeiting provisions of the current

current law prohibits speech which poses no risk to the realization of the Government's interest in prevention of counterfeiting, and regulates such speech as the Government allows based upon criteria which bear no substantial relation to the fulfillment of that interest. The statutes in question were thus properly struck down in the court below.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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January 10, 1983

Title 18 a single offense, again defined as the making, uttering or possession of a counterfeit written instrument "*with intent to deceive or harm another person or a government*". S. 1630, 97th Cong., 1st Sess. § 1741(a)(1981) (emphasis supplied).

Under all of these bills, the critical focus would quite properly be on the intent of the actor, and the senseless preoccupation with the size, color, purpose and location of pictures that now characterizes § 504 would be abandoned. Agents of the Secret Service could still vigorously pursue would-be counterfeiters, but would be denied the opportunity for chronic, pointless harassment of magazine publishers—or individual artists—for the publication of distorted pictures which all agree to be harmless.

APPENDIX A

Title 18, U.S.C. § 474 ¶ 6 (1976)

"Whoever prints, photographs, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any . . . obligation or other security [of the United States], or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States, or brings into the United States, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States;

". . . .

"Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

Title 18, U.S.C. § 504 (1976)

Notwithstanding any other provision of this chapter, the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) postage stamps of the United States,

(B) revenue stamps of the United States,

(C) any other obligation or other security of the United States, and

(D) postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation,

for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illus-

trations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

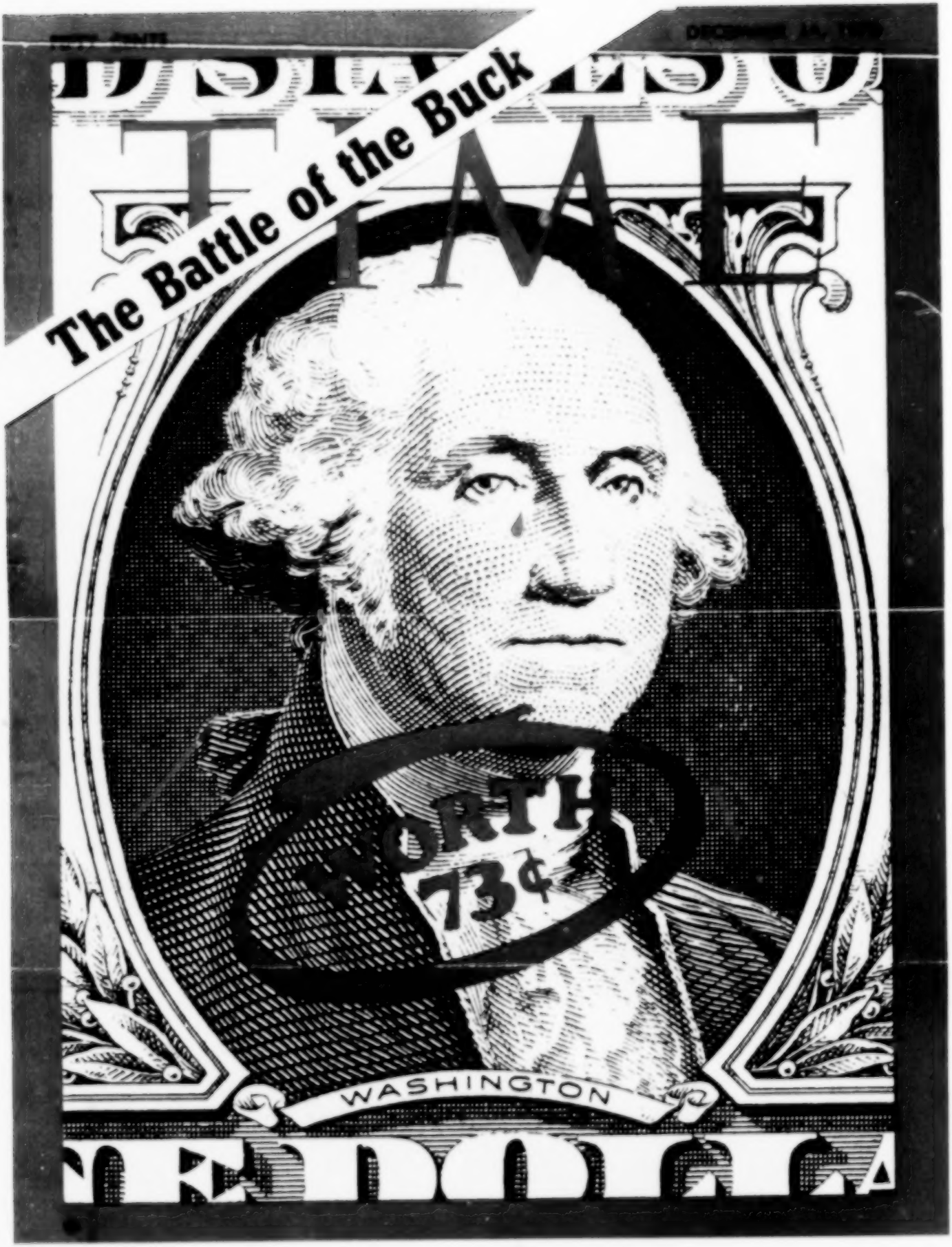
(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) all illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) the negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) the making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term "postage stamp" includes postage meter stamps.


TIME
The Battle of the Buck
WORTH
73¢
WASHINGTON

How to Mobilize Against Inflation

Inflation may be becoming to the 1970s what depression was to the 1930s—not only an economic agony but a crisis that threatens the stability of society. Like the Great Depression four decades ago, today's Great Inflation has struck a blow at Americans' usual optimism about the future and replaced it with a deep worry—about whether families will be able to afford travel, comfortable housing, quality education for their children, even the foods they like best.

Millions of people justifiably feel that the economy is cheating them of the rewards of hard work and thrift. A few more years of skyrocketing prices that wipe out much of the middle class and reduce some Americans to eating dog food could well cause many voters to question whether a system so fundamentally flawed can endure.

The public demoralization is being vastly increased by a gnawing fear that no one knows how to stop inflation in a modern democratic capitalist economy. The Government swings erratically from price controls to a free market, from budget stimulation to budget cutting, from easy money to tight money; nothing seems to work for long. Economists discussing anti-inflation strategy have rarely been so modest and tentative; several seem confident only in proclaiming that their colleagues' ideas will not work.

Modesty is advisable: inflation is in fact the most torturingly complex problem of modern economics. It seems inextricably bound up with growth and high employment; a quick and sure solution might be achieved by inducing another depression—but that would be too severe a cure. Moreover, inflation has become a worldwide plague (TIME cover, April 8). The U.S., even if it can control the economic sickness within its own borders, might be subject to reinfection from abroad.

But if no quick, final cure is in sight, the Government still has an obligation to act. The economy, to be sure, is not completely manageable by Washington, but there are a number of policy actions that could be taken to greatly reduce inflation's severity. And in dealing with inflation, degree is crucial; the difference between price increases at annual rates of, say, 6% and 12% is the difference between excessive social drinking and incapacitating alcoholism.

The steps are slow-working and painful. Worse, they sound like a prescription for ensuring the defeat of any President who tries them, since they amount to taking on every vested interest in the economy at once. So there will be a strong temptation to avoid them and hope that a recent downturn in inflation—from an annual rate of 12.3% in the first quarter to 8.8% in the second—continues on its own. But that improvement is scarcely satisfactory; the Government must do all it can to bring the rate down further.

The first essential is to hold down federal spending and reduce the rate of increase in the U.S. money supply. That classic remedy for inflation has been advocated so often that Administration officials refer to it as "the old-time religion." It means slow growth, sluggish profits, distressing unemployment. So it is not surprising that the old-time religion has been more often preached than followed.

Right now, the Federal Reserve Board is acting the role of zealous convert. In 1972 and early 1973 it pumped out enough money to overstimulate a booming economy; money supply in the last quarter of 1972 grew at a startling annual rate of 8.4%. Lately the board has held the increase to a rate of about 6%, a growth much slower than the explosive—and inflationary—surge in demand for business loans. Interest rates have consequently gone into orbit. But as Alan Greenspan, who is Nixon's choice to become head of the Council of Economic Advisers, has pointed out, that policy has been pushed close to the point at which it will self-destruct. Savings and loan associations and savings banks cannot effectively compete with commercial banks for funds in the tight money market, and some may soon teeter on the edge of collapse. If so, the Federal Reserve would have to come to their rescue as "lender of last resort"—and that would mean another massive, inflationary increase in the money supply. The Federal Reserve, in other words, cannot fight inflation all by itself; it needs help from Administration budget makers—who, while preaching fiscal conservatism, have run up a cumulative deficit of $68 billion in five years.

Federal Reserve Chairman Arthur Burns called last week for a $10 billion cut in Government spending for fiscal 1975, which is budgeted at $305 billion, v. $270 billion in the last fiscal year. President Nixon himself has said that expenditures should be held to $300 billion, at which point they might just be balanced by growing revenues, but he has postponed the hard decisions about where to cut. Small wonder. The choice will have to be made from a herd of sacred cows: military spending, veterans' benefits, revenue-sharing aid to states and cities.

The size and specifics of any cut in this year's budget are less important than that the Administration, the Federal Reserve and Congress all determine to apply fiscal-monetary restraint for as long as is necessary. The policy need not be pressed hard enough to cause a recession. Rather, the strategy should be to permit some real growth, but keep the budget and monetary brakes on hard enough to hold total demand for several years slightly below the economy's capacity to increase the output of goods and services, until the inflationary momentum at last subsides.

Such a hold-down would set up severe strains in the economy, which the Government must be prepared to ease. For one thing, credit would remain scarce and costly, especially for small businessmen and home buyers. To prevent big corporations from gobbling up all the loan money, the Government would have to nag bankers to turn down some loans and perhaps institute credit controls if they refused.

A long-term program of holding down demand would mean that for years the nation could not reduce the jobless rate to the 4% "full employment" level; unemployment might well rise beyond the present 5.2%. The unemployed, of course,

TIME
THE BIG PAYOFF
Lockheed Scandal:
Graft Around the Globe

$1.00 NOVEMBER 1, 1976

TIME

Are Things as Good as Ford Says?

Or as Bad as Carter Says?

VOTING YOUR POCKETBOOK

FORTUNE

$2.00 February 12, 1979

AMERICA'S INVISIBLE RICH

Taiwan's Future

The Nightmare of Natural-Gas Decontrol

Cadillac's Super-Salesman

Sports Illustrated
FEBRUARY 16, 1981 $1.50

ANATOMY OF A SCANDAL

The Mastermind's Inside Story of the Boston College Point-Shaving Scheme

Use Of Illustrations Of Obligations & Securities Of The United States & Foreign Governments

Department Of The Treasury

United States Secret Service

The Department of the Treasury sponsored legislation to liberalize and clarify laws relating to the use of illustrations and films of paper money, postage and revenue stamps, checks, bonds and other obligations of the United States and foreign governments. This legislation was passed by Congress on September 2, 1958 (Public Law 85-921) and was further amended on June 20, 1968, to permit reproductions of postage stamps in color under certain conditions (Public Law 90-353).

As the Federal enforcement agency charged with safeguarding our Nation's currency, the United States Secret Service believes that any permission to photograph and reproduce pictures of money, in color, would seriously weaken the safeguards designed to protect our currency.

As an aid to those interested in the use of such illustrations and films, this leaflet sets forth pertinent information as to the conditions under which it is permissible to print illustrations and to make films of United States and foreign obligations and securities.

PAPER MONEY, CHECKS, BONDS, ETC.

Printed illustrations of paper money, checks, bonds and other obligations and securities of the United States and foreign governments are permissible for numismatic, educational, historical and newsworthy purposes, and for numismatic or philatelic advertising but not for general advertising purposes. Illustrations must be in black and white and must be less than three-fourths or more than one and one-half times the size of the genuine instrument. No individual facsimiles of such obligations are permitted, and no illustrations of paper money, checks or bonds may be in color.

To be permissible, an illustration must be accompanied by numismatic, educational, historical or newsworthy information relating directly to the item that is illustrated. Illustrations used primarily for decorative or eye-catching purposes are not permissible.

Motion-picture films, microfilms and slides of paper money, checks, bonds and other obligations and securities of the United States and foreign governments are permitted in black and white or in color for projection upon a screen or for use in telecasting. They may not be used for advertising purposes, except philatelic or numismatic advertising.

ADVERTISING

Printed illustrations or films of paper money, checks or bonds are not permitted in connection with advertising. However, printed illustrations of paper money, but not films, may be used in connection with numismatic advertising. Also, Treasury regulations permit the illustration of United States bonds in connection with a campaign for the sale of such bonds.

UNITED STATES AND FOREIGN POSTAGE STAMPS

Printed illustrations of canceled and uncanceled United States postage stamps are permissible for articles, books, journals, newspapers or albums for philatelic, educational, historical and newsworthy purposes.

"less than 3/4 or more
than 1 1/2 times"
THE UNITED STATES OF AMERICA
ONE DOLLAR

Black and white illustrations may be of any size. Colored illustrations of canceled United States postage stamps may be of any size. However, illustrations in color of uncanceled United States postage stamps must be less than three-fourths or more than one and one-half times the size of the genuine stamp.

Printed illustrations of canceled foreign stamps in black and white or color, are permissible in any size and for any purpose.

Black and white and color illustrations of uncanceled foreign postage stamps are permitted for philatelic, educational, historical and newsworthy purposes. Black and white illustrations may be of any size, but color illustrations must be less than three-fourths or more than one and one-half times the size of the genuine stamp.

Motion-picture films and slides of United States and foreign postage stamps are permissible in black and white or in color for projection upon a screen or for use in telecasting. They are not permissible for advertising purposes except for philatelic advertising.

PHILATELIC ADVERTISING

Black and white illustrations of canceled and uncanceled United States and foreign postage stamps, as well as colored illustrations of canceled postage stamps are permissible in any size, for philatelic advertising. Uncanceled colored illustrations of United States and foreign postage stamps are permitted for philatelic advertising, but must meet the three-fourths or one and one-half size restrictions.

Note: Canceled U. S. and foreign postage stamps must bear an official cancellation mark, i.e., the stamps must have been used for postage.

REVENUE STAMPS

Regulations for printed illustrations of United States and foreign revenue stamps are the same as for postage stamps, except that colored illustrations of United States revenue stamps are not permitted.

DESTRUCTION OF PLATES AND NEGATIVES

The plates and negatives, including glossy prints, of any United States or foreign obligations produced for any of the above purposes, must be destroyed after their final use for the purpose for which they were made.

COINS

Photographs or printed illustrations, motion-picture film or slides of United States and foreign coins may be used for any purpose including advertising.

With few exceptions, existing law generally prohibits the manufacture, sale or use of any token, disk or device in the likeness or similitude of any coins of the United States or of any foreign country which are issued as money.

"canceled stamps may
be in color &
in any size"
8¢
ENHOWER U.S.A.

EXCERPTS FROM APPLICABLE STATUTES

TITLE 18, U.S. CODE, SECTION 8

"The term 'obligation or other security of the United States' includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any Act of Congress, and canceled United States stamps."

TITLE 18, U.S. CODE, SECTION 481

"Whoever, except by lawful authority, prints, protographs, or makes, executes, or sells any engraving, photograph, print, or impression in the likeness of any genuine note, bond, obligation, or other security, or any part thereof, of any foreign government, bank, or corporation; or whoever brings into the United States any counterfeit plate, stone, or other thing, engraving, photograph, print, or other impressions of the notes, bonds, obligations, or other securities of any foreign government, bank, or corporation shall be fined not more than $5,000 or imprisoned not more than five years, or both."

TITLE 18, U.S. CODE, SECTION 15

"The term 'obligation or other security of any foreign government' includes, but is not limited to, uncanceled stamps, whether or not demonetized."

TITLE 18, U.S. CODE, SECTION 504

"Notwithstanding any other provision of this chapter, the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) postage stamps of the United States,

(B) revenue stamps of the United States,

(C) any other obligation or other security of the United States, and

(D) postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation,

for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) all illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) the negative and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) the making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term 'postage stamp' includes postage meter stamps."

TITLE 18, U.S. CODE, SECTION 474

"Whoever prints, photographs, or in any other manner makes

or executes any engraving, photograph, print, or impression in the likeness of any such obligation or other security (of the United States), or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States, or brings into the United States, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; • • • shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both."

TITLE 18, U.S. CODE, SECTION 475

"Whoever designs, engraves, prints, makes, or executes, or utters, issues, distributes, circulates, or uses any business or professional card, notice, placard, circular, handbill, or advertisement in the likeness or similitude of any obligation or security of the United States issued under or authorized by any Act of Congress or writes, prints, or otherwise impresses upon or attaches to any such instrument, obligation, or security, or any coin of the United States, any business or professional card, notice, or advertisement, or any notice or advertisement whatever, shall be fined not more than $500."

TITLE 18, U.S. CODE, SECTION 489

"Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government shall be fined not more than $100."

In God we